

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

FERNANDO GASTELUM,

Plaintiff,

v.

TILLY’S, INC.,

Defendant.

Case No. 1:22-cv-00178-KES-CDB

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, GRANTING  
DEFENDANT’S MOTION TO DISMISS,  
DECLINING SUPPLEMENTAL  
JURISDICTION OVER PLAINTIFF’S STATE  
LAW CLAIM, DENYING PLAINTIFF’S  
MOTION FOR LEAVE TO AMEND, AND  
DISMISSING PLAINTIFF’S UNRUH ACT  
CLAIM WITHOUT PREJUDICE

(Doc. 41)

On February 11, 2022, plaintiff Fernando Gastelum filed a complaint against defendant Tilly’s, Inc.,<sup>1</sup> alleging violations of the American with Disabilities Act (ADA) and California’s Unruh Civil Rights Act. Doc. 1. The claims stem from alleged barriers that plaintiff encountered while visiting two facilities owned by defendant. *Id.* ¶¶ 3, 8–13. Following defendant’s filing of a motion to dismiss, Doc. 6, the matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. *See* Doc. 34.

After the assigned magistrate judge issued findings and recommendations to grant defendant’s motion to dismiss, plaintiff filed a motion for leave to amend and lodged a first

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<sup>1</sup> Defendant World of Jeans & Tops dba Tillys (“Defendant”) notes it is erroneously sued as Tilly’s, Inc. Doc. 6 at 1.

1 amended complaint. Docs. 37–38. On February 3, 2025, the assigned magistrate judge re-issued  
2 findings and recommendations to: (1) grant defendant’s motion to dismiss on the grounds that the  
3 Court should decline to exercise supplemental jurisdiction over plaintiff’s Unruh Act claim; (2)  
4 deny plaintiff’s motion for leave to amend; and (3) dismiss plaintiff’s Unruh Act claim without  
5 prejudice to plaintiff’s refile of this claim in state court. Doc. 41. The findings and  
6 recommendations were served on all parties and provided the parties with 14 days to file  
7 objections. *Id.* at 18. The findings and recommendations advised that the “failure to file  
8 objections within the specified time may result in the waiver of rights on appeal.” (*Id.*) (citing  
9 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)). No objections have been filed, and the  
10 time to do so has now passed.

11 Pursuant to 28 U.S.C. § 636(b)(1), the Court has conducted a de novo review of this case.  
12 Having carefully reviewed the entire file, the Court concludes that the findings and  
13 recommendations are supported by the record and by proper analysis.

14 Accordingly:

- 15 1. The February 3, 2025, findings and recommendations, Doc. 41, are ADOPTED in  
16 FULL;
- 17 2. The Court GRANTS defendant’s motion to dismiss, Doc. 6, and DECLINES to  
18 exercise supplemental jurisdiction over plaintiff’s Unruh Act claim pursuant to 28  
19 U.S.C. § 1367(c)(4);
- 20 3. The Court DENIES plaintiff’s motion for leave to amend, Doc. 38; and
- 21 4. Plaintiff’s Unruh Act claim is DISMISSED without prejudice to plaintiff’s filing  
22 of this claim in state court.

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25 IT IS SO ORDERED.

26 Dated: March 27, 2025

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UNITED STATES DISTRICT JUDGE